J.A.H. Carting Corp. *and* Local 813, International Brotherhood of Teamsters, AFL–CIO. Cases 29–CA–18595, 29–CA–18657, and 29–CA–18762

April 8, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On October 10, 1995, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board orders that the Respondent, J.A.H. Carting Corp., Flushing, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F. 2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent's exceptions assert that the judge's decision evidences bias and prejudice. On our full consideration of the entire record in these proceedings, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias against the Respondent in her analysis and discussion of the evidence.

[2] In the first paragraph of sec. II,B of her decision, the judge found that the Respondent received the Union's written demand for recognition in late September or early October 1994. In her Conclusion of Law 6, however, the judge states that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to bargain with the Union ''since on and after September 21, 1994.'' In order to more accurately reflect the state of the record on this matter, we shall modify that conclusion of law by substituting ''since late September or early October 1994'' for ''since on and after September 21, 1994.'' This modification does not, however, affect the correctness of the judge's finding in the final paragraph of sec. II,C of her decision, which we adopt, that the bargaining order remedy for the 8(a)(1), (3), and (4) violations should date from September 21, 1994, the date that the Respondent embarked on its clear course of unlawful conduct to undermine the Union's majority status.

Ann Goldwater and *Diane H. Lee, Esqs.*, for the General Counsel.

Joseph M. Mayerhoff, Esq., of Flushing, New York, for the Respondent.

Michael Lieber, Esq., of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Brooklyn, New York, on February 15 and 16 and May 23, 1995. The complaint alleges that Respondent engaged in numerous violations of Section 8(a)(1) of the Act, that Respondent discharged employees Dino De Cesare and Ralph Diaz in violation of Section 8(a)(3) and (4) of the Act and that Respondent failed to bargain with the Union in violation of Section 8(a)(5) of the Act. The complaint seeks as a remedy, inter alia, a bargaining order based upon authorization cards. The Respondent denies that it has engaged in any violations of the Act and asserts that the Board lacks jurisdiction herein.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent on July 26, 1995, I make the following[1]

FINDINGS OF FACT

I. JURISDICTION

The Respondent, which maintains a place of business in Flushing, New York, is engaged in garbage collection for commercial customers. On October 5, 1994, Respondent stipulated on the record in a hearing held in Case 29–RC–8357 that it ''performs services valued in excess of 50,000 dollars for various enterprises located in the State of New York, each of which enterprises in turn meet a direct Board standard for the assertion of jurisdiction exclusive of indirect inflow and indirect outflow.'' The Respondent further stipulated on the record in that case that it is engaged in commerce within the meaning of the Act. In its answer to the instant complaint, however, Respondent denied that it is engaged in commerce. Counsel for Respondent stated on the record on the first day of the hearing herein that he had made the stipulation in the representation case in error because he had been misled by Regional Director Blyer in a conference conducted before the representation hearing. In the brief submitted herein by Respondent, counsel maintains that he was misled by Board Agent Roth. Notwithstanding these assertions, counsel for Respondent also argued on the record herein that Respondent had entered into the stipulation ''legitimately,'' but that circumstances had changed in the time between the commencement of the representation proceeding and the service of the complaint herein. Having heard the arguments of the parties concerning jurisdiction at the hearing, I ruled that Respondent was bound by its stipulation in Case 29–RC–8357 and I struck that portion of Respondent's answer which denied that the Board had jurisdic-

[1] Counsel for the General Counsel and counsel for the Respondent are urged, in future, to read their briefs before they are served and filed. I note that the brief filed on behalf of Respondent is replete with factual statements that are not supported by the record; these are too numerous to list. I have based my findings of fact on the record herein and I have disregarded purported facts stated for the first time in Respondent's brief.

tion over the Respondent. See *Dollar Rent A Car*, 250 NLRB 1361 (1980). However, I permitted Respondent to read into the record an offer of proof and to introduce certain evidence. Counsel for the General Counsel also attempted to introduce certain evidence concerning jurisdiction, but the document was rejected pursuant to the objection of Respondent. In *Spring Valley Farms*, 274 NLRB 643, 644 (1985), the Board affirmed the administrative law judge's finding that a respondent is bound by its stipulation in a prior representation case that it meets the criteria for the assertion of jurisdiction ''in the absence of any evidence submitted by Respondent that it no longer meets the [jurisdictional criteria] established in the representation case.'' I read this language to mean that Respondent is bound by its stipulation unless it can show that after the stipulation was entered into circumstances changed and that by the time the unfair labor practice proceeding was commenced it no longer met the jurisdictional criteria. I reject the suggestion of Respondent that the 12-month period before the representation petition was filed should be compared with the 12-month period before the issuance of the complaint. Adoption of that method would produce a situation where changes in circumstances which took place before the stipulation was entered into could be cited to undermine the stipulation; this lack of finality would encourage relitigation of matters established in representation proceedings.[2] In the instant case, Respondent produced testimony that it lost one $32-per-week account in February 1995. Respondent's brief represents that in the 12 months before it entered into the stipulation on October 5, 1994, Respondent had revenue of approximately $72,000. The loss of the one account cited would not bring Respondent's income below the $50,000 level required for the assertion of jurisdiction herein. I reject as inaccurate Respondent's statement that by permitting its offer of proof I abrogated my ruling that its answer denying jurisdiction must be stricken. The state of the record herein is that I have ruled that Respondent is bound by the stipulation on jurisdiction it entered into on October 5, 1994, and I find that the record contains no evidence justifying a reversal of that ruling.

Respondent cited its failure to be served with two of the charges herein. The complaint was served on January 4, 1995, a date within 6 months of the events alleged as unfair labor practices. *Buckeye Plastic Molding*, 299 NLRB 1053 (1990).

Respondent admitted that Local 813, International Brotherhood of Teamsters, AFL–CIO is a labor organization under the Act.

I find that J.A.H. Carting Corp. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[2] In this case, Respondent wishes to compare its business in the 12 months before September 1994, when the representation proceeding began, with a purported lesser amount of business in the 12 months before December 1994, when the instant complaint was issued. Respondent was able to cite only one account it lost after the date of the stipulation.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Credibility of the Witnesses*

Jose Ralph Diaz and Dino Di Cesare testified that they had worked for Respondent and they each recounted the incidents that are the basis for the instant complaint. Both of these witnesses had some difficulty recalling dates and the sequence of events. As to several of the incidents they testified about, their narratives were so confused that I shall disregard their testimony completely. However, some of their testimony had the ring of truth. It was clear to me that Diaz and Di Cesare did recall accurately several conversations with a manager of Respondent and I shall rely on their testimony where warranted. Rick Carnivale, the executive management consultant of Respondent, testified on behalf of Respondent. His testimony was often in response to leading questions by counsel for Respondent and I have evaluated the answers given in this manner carefully. Further, a great deal of Carnivale's testimony was obvious hearsay and was predicated on inferences or suppositions stated by him on the record; although much of this hearsay testimony was unobjected to by counsel for the General Counsel, I shall not rely on it to find any facts that are material to the allegations herein. Finally, Carnivale's testimony was inconsistent and self-contradictory. Often, Carnivale gave two different versions of the facts in the course of a single answer; he would begin a response to a question with one version of the facts and conclude with a different version. Carnivale's demeanor in the hearing room showed that he was hostile to the legal process. I was convinced from my observation of him as he testified that he readily fabricated testimony as he went along. I shall not rely on Carnivale's testimony where it is contradicted by more credible evidence or where its inherent contradictions make it unlikely that the testimony is accurate. Thomas Gioia, a business agent for the Union, testified on behalf of the General Counsel. I shall credit his testimony.

B. *Facts, Discussion, and Conclusions*

Local 813 Business Agent Gioia met with three employees of Respondent on September 8, 1994. The men discussed the benefits of union membership, and Dino Di Cesare and Mukhtiar Singh (often referred to as Gill) signed union authorization cards on that day. Jose Ralph Diaz was at the meeting. He signed a card on September 22, 1994. Respondent stipulated that at the end of September or the beginning of October 1994 it received a letter from the Union requesting recognition as the exclusive representative of the employees and bargaining on behalf of the employees.

Di Cesare testified that he began driving a garbage truck for Respondent about August 1, 1994. He was hired by Rick Carnivale to whom he showed his commercial driver's license. For a few days Carnivale accompanied Di Cesare to teach him how to drive a garbage truck. After that period, Carnivale told him that he was a good driver and permitted him to drive on his own. Carnivale told Di Cesare that the job was permanent because his former driver, Sewa Dhillon Singh (also called Sam), had hurt his back and was gone. At first, Di Cesare received $300 per week for driving 6 nights per week; after he asked for a raise, he was given $350 per week. Di Cesare was paid in cash or was given his wages

half in cash and half by check. Di Cesare had two helpers on the truck whose job it was to toss garbage bags or to empty containers into the back of the truck: these were Diaz and Gill. Twice a week, Diaz collected fees from the customers of Respondent. Diaz also kept track of how much garbage each customer disposed of; this task took 1 minute at each stop. A few weeks after Di Cesare began work for Respondent, Carnivale went to Florida. Carnivale and Di Cesare spoke by telephone during this period, and Di Cesare informed Carnivale that all was well with the business.

Di Cesare testified that on September 21, 1994, Carnivale called him at home and asked whether he had signed a card for the Union. When Di Cesare replied that he had signed a card, Carnivale reminded Di Cesare that he had told him never to sign any union cards and to stay away from the Union.[3] A few days after this conversation, Carnivale met with Di Cesare, Diaz, and Gill at a diner at about 10 or 11 a.m. Carnivale told the three employees that they had to change their minds about joining the Union. He told them that he would increase their pay by $100 per week. Carnivale instructed Di Cesare to tell the Labor Board that he had been hired as a temporary worker; he told Diaz to say that he was only a bill collector; and he told Gill to say that he was the sole helper. Carnivale told the men that they should tell the Board that they signed the union authorization cards in the belief that they were for magazine subscriptions. He said that if the men signed with the Union it would cause a lot of problems and break down the Company. Carnivale said that there would never be a union; he would change the company name; and he would make things even worse for the men. He told Di Cesare, ''I'll fire you. You and Ralph [Diaz] will get fired.'' Carnivale told the men that there were three things he hated, the ''Feds,'' the City Department of Consumer Affairs, and unions.

Di Cesare tried to recall an occasion when he and Diaz believed that Carnivale was following them around as they met with a union agent before proceeding to the first day of the scheduled hearing in the representation case.[4] His testimony is too confused on this point for me to find any unfair labor practices based on this evidence. However, Di Cesare testified credibly concerning events following that day. According to Di Cesare, the night after the hearing was postponed, he went to work, but Carnivale said that he would drive the truck himself, and he instructed Di Cesare to go home and spend time with his new baby. The next night, Di Cesare again reported for work and again Carnivale sent him home. Di Cesare asked whether he was fired and Carnivale said, ''No, not right now,'' and explained that he would see what happened the next day at the Labor Board. Di Cesare testified at the representation hearing the next day. After the hearing, he and counsel for the Union, Michael Lieber, Esq., spoke to Carnivale. Lieber asked Carnivale whether Di Cesare had been fired. Carnivale said, ''[Y]es.'' A few days later, Di Cesare went to Carnivale's home to return the keys to the garbage truck and to receive $60 which was owed to him. Carnivale's wife, Linda Healey the president and owner of Respondent, came to the door. According to Di Cesare, she began screaming at him, calling him a ''fucking idiot'' and ''an asshole,'' saying that Di Cesare had caused a problem with the Union and that he had known the job was nonunion when he was hired.[5]

Diaz testified that he had worked as a helper for Respondent for about 5 years. His job was to pick up garbage and throw it into the truck. On Thursdays and Fridays, he collected money from Respondent's customers. He also kept a record of how many bags or containers of garbage Respondent's customers disposed of each week. He was paid $350 per week; $225 of this was by check and the rest in cash. Diaz recalled that Carnivale met with the employees at a diner in late-September 1994 and told them that the Union could not get in; and he would get rid of whoever tried to bring the Union. Carnivale expressed his willingness to give the men a raise to $400 per week for testifying as he wished in the representation proceeding; he wanted Gill to pretend that he could not speak English; he told Di Cesare to say that he only worked 3 days a week; and he told Diaz to testify that he was not a helper but that he was a bill collector. Carnivale stated that if they did not do as he wished, he would get rid of them; he would sell the Company; or change its name. Diaz testified that on the night that Carnivale sent Di Cesare home instead of permitting him to work, Carnivale took Diaz aside and told him what to say when he went to the representation hearing. He called Diaz an ''inconsiderate mother-fucker,'' and said he would break Diaz' arms if he did not testify as instructed. Carnivale said that he had gotten rid of Di Cesare and that he would get rid of Diaz in the same manner if he continued with his union support. Nevertheless, Diaz testified truthfully at the hearing. On the night of the hearing when Diaz reported to work, Carnivale cursed him and said that he would get rid of him for testifying contrary to Carnivale's instructions. Diaz had been caring for Carnivale's dog for several years, and Carnivale instructed him to go home and bring the dog to Carnivale's home. Diaz had left the dog with his former landlord and he made arrangements to pick him up on the weekend. However, Carnivale refused to let Diaz work the next night and again he sent him home to get the dog. Carnivale cursed him and threatened to break his legs. On the third night, Diaz again told Carnivale that he would bring the dog on the weekend. Carnivale yelled at Diaz. He said that he had told Diaz what to do; he said that Di Cesare was not there any more; and that Diaz would be the next one to go. Carnivale did not permit Diaz to work that night. Eventually, Carnivale picked up the dog at Diaz' former residence. When Diaz next attempted to report to work, Carnivale told him that he was fired.

Attorney Lieber testified that on October 5, 1994, after the representation hearing he asked Carnivale about the employment status of Di Cesare. Carnivale stated that Di Cesare had been fired. On October 11, the second day of representation hearings, Lieber asked Carnivale about Diaz. Carnivale replied that Diaz had been fired.

Carnivale testified that he is a Florida resident and that he took his wife to Florida for medical treatment on August 19, 1994, and returned to New York on September 25. Respondent maintains that Di Cesare was a temporary employee who was filling in while Carnivale went to Florida. Carnivale stat-

[3] Di Cesare could not recall whether Carnivale was telephoning from Florida or from New York.

[4] The hearing was postponed to October 5, 1994, after the union agent and the men arrived at the Regional Office.

[5] Linda Healey did not testify herein.

ed that he had been driving the garbage truck for a ''few months'' ever since the regular driver, Sam Singh, left for an operation on his back or because of lung disease. Carnivale testified that Singh left in July and that Di Cesare began driving the truck on August 1. Carnivale then stated that before he drove a truck, Di Cesare did work in the yard and that weeks after this he spent 7 to 10 days teaching Di Cesare to drive the truck. When shown a check from Respondent to Di Cesare for $150 dated August 20, 1994, Carnivale said that this payment was for yard work or mechanical work and not for driving. Carnivale maintained that he had offered to pay Di Cesare $10 per hour or $75 per day whichever was greater and that Di Cesare wanted to be paid off the books. Carnivale testified that Di Cesare was not an employee of Respondent, and that he was not paid by Respondent but was paid personally by Carnivale for driving the truck as his own replacement. Carnivale asserted that he drove the truck while he waited for Sam Singh to return to work. He insisted that he intended to keep driving the truck himself until Singh's return. At the time of the instant hearing in 1995, Carnivale had not spoken to Sam Singh since July 1994, but he had met a friend of Singh's who told him that Singh was partially paralyzed and was in Canada or California. Carnivale also testified that he was looking for a good driver at the time of the instant hearing and that he was using a temporary driver ''until I find the right one'' at which time he would fill the job. On cross-examination, Carnivale admitted that he does not have the commercial driver's license that is required in order to drive a garbage truck. Carnivale testified that he had met with the employees on the night of September 25 to thank them for working in his absence. He denied that anyone mentioned the Union on this occasion. According to Carnivale, September 25 was the last night Di Cesare worked as a truckdriver for him. Carnivale stated that he did not learn about the union petition until September 28, and that he told the men that they were not to discuss it with him. As stated above, I found that Carnivale was not a reliable witness and I shall not rely on any of this testimony.

I credit Di Cesare's testimony that he was hired to drive Respondent's garbage truck about August 1, 1994, and that Carnivale told him the job was permanent. I find that Di Cesare was an employee of Respondent. I credit Di Cesare's testimony that Diaz was a helper on the truck and regularly tossed garbage into the truck. I credit Di Cesare that Carnivale called him at home on September 21, 1994, asked him if he had signed a card for the Union, and told him to refrain from union activities. I credit Di Cesare that some time after this conversation, Carnivale met with all three employees and told the men to refrain from supporting the Union and to repudiate the Union, promised to increase their pay if they followed his instructions, and urged them to lie to the Board about their membership in the Union and their employment status with Respondent. I credit Di Cesare that Carnivale threatened the men with adverse actions and with discharge if they supported the Union and that Carnivale told them that seeking membership in the Union was futile. Thus, I find that Respondent violated Section 8(a)(1) of the Act. I credit Di Cesare's testimony that the owner and president of Respondent cursed at him for joining the Union and for bringing the Union to Respondent. I find that Respondent discharged Di Cesare because he joined and supported the Union and because he testified at the representation proceeding. Respondent thus violated Section 8(a)(3) and (4) of the Act.

Carnivale testified that Diaz collected money from customers and worked on the garbage truck as a clerical employee. Carnivale denied that Diaz was a helper and he stated that Diaz tossed garbage only when he felt like it. At the instant hearing, Carnivale testified that Diaz spent 40 percent of his time collecting money, 50 percent doing surveys, and 10 percent of his time eating a meal. At the representation hearing, Carnivale had testified that Diaz spent 65 percent of his time collecting money, 20 percent doing surveys, and the rest of the time Diaz threw garbage into the truck. Carnivale denied threatening his employees and he denied telling them how to testify in the representation proceeding. Carnivale denied that he had discharged Diaz. He stated that he had sent Diaz home to get his dog and to pick up certain route records but that Diaz did not come to work and did not call. Respondent contends that Diaz voluntarily quit his job. Nevertheless, Respondent proffered testimony by Carnivale that he was becoming dissatisfied with Diaz' performance. I shall not rely on this testimony: as stated above, I do not find that Carnivale was a credible witness and Respondent does not contend that Diaz was discharged for poor performance.[6]

I find that Diaz was employed by Respondent as a helper on its garbage truck. I credit Diaz that Carnivale said that he would discharge employees who tried to bring in the Union and that he promised the men a raise to testify falsely at the representation proceeding. I credit Diaz that Carnivale threatened to discharge anyone who did not testify as he wished and that he threatened to sell the Company or change its name. In addition to the unfair labor practices found above, I find, based on the testimony of Diaz, that Carnivale threatened to sell the Company if the employees persisted in their support for the Union, threatened Diaz with bodily harm if he did not testify in favor of Respondent at the representation proceeding, and that he threatened Diaz with discharge if he continued to support the Union. I find that Carnivale told Diaz that he had discharged Di Cesare for joining the Union. I find that Carnivale discharged Diaz because he testified contrary to Carnivale's instructions at the representation hearing and because he joined and supported the Union. Respondent thus violated Section 8(a)(1), (3), and (4) of the Act.

C. *The Request for a Bargaining Order*

The record establishes that in September 1994, Respondent had three employees: these were Mukhtiar Singh, Dino Di Cesare, and Jose Ralph Diaz. I do not find that Sewa Dhillon Singh was an employee: he had not been heard of for months, Carnivale had no idea of his whereabouts, and he was said to be partially paralyzed. Indeed, at the time of the hearing in 1995, Carnivale testified that the job of driver would be filled as soon as he found the right candidate. The record establishes that the following employees of Respondent constitute a unit appropriate for collective bargaining:

> All chauffeurs and helpers employed by the employer at its Flushing facility, excluding all office clerical em-

[6] I find all of Carnivale's testimony about the dog to be particularly disingenuous.

ployees, guards and supervisors as defined in Section 2(11) of the Act.

The record shows that on September 8, 1994, the Union had received signed authorization cards from two of the three employees of Respondent. On September 22, the Union received a card from the third employee.

The General Counsel contends that Respondent has engaged in unfair labor practices so serious and substantial that the possibility of erasing the effects of these unfair labor practices and of conducting a fair election by the use of traditional remedies is slight. The General Counsel urges that the employees' sentiments have been expressed through authorization cards and that they would better be protected by the issuance of a bargaining order.

I have found above that Respondent unlawfully interrogated its employees and directed them to refrain from supporting the Union and to repudiate the Union, directed the employees to testify falsely at the representation hearing, threatened them with bodily harm and discharge if they did not abandon the Union and testify falsely at the representation proceeding, threatened to sell the Company and render their selection of the Union a futile act, offered employees a raise to abandon the Union and to testify falsely, informed an employee that another employee had been fired because he joined the Union, and I have found that Respondent discharged two employees because they joined the Union and refused to abandon their membership in the Union and because they gave truthful testimony at the representation proceeding. By discharging two of the three unit employees, Respondent effectively rid itself of the employees who resisted its threats and who continued unwavering in their support for the Union. All of the unfair labor practices were committed by the manager of Respondent who ran the Company and who hired and fired employees; this manager is the husband of the president and owner of Respondent. These unfair labor practices are outrageous and pervasive, and their coercive effects cannot be eliminated by the application of traditional remedies. A fair and reliable election cannot be held among the Respondent's employees. *NLRB v. Gissel Packing Co*., 395 U.S. 575, 613–614 (1969). A bargaining order is warranted to best protect employees' rights.

I have found above that on September 8, 1994, the Union received signed authorization cards from a majority of the employees in the appropriate unit. I find that on September 21, 1994, when Carnivale interrogated Di Cesare and told him to stay away from the Union, Respondent embarked on a clear course of unlawful conduct to undermine the Union's majority status. Thus, the bargaining order should date to September 21, 1994. *Trading Port*, 219 NLRB 298, 301 (1975), and *Drug Package Co*., 228 NLRB 108, 111 (1977).

CONCLUSIONS OF LAW

1. By coercively interrogating its employees, instructing them to refrain from union activity and to repudiate the Union; instructing its employees to testify falsely at a representation proceeding; promising employees a raise if they repudiated the Union and testified falsely at a representation proceeding; informing its employees that seeking membership in the Union was futile; threatening its employees with adverse action and with discharge if they continued to support the Union, threatening to sell the Company if the employees supported the Union; threatening its employees with bodily harm if they did not testify in Respondent's favor at a representation hearing; and informing its employees that an employee had been discharged for joining the Union, Respondent violated Section 8(a)(1) of the Act.

2. By discharging Dino Di Cesare and Jose Ralph Diaz because they joined and supported the Union, Respondent violated Section 8(a)(3) and (1) of the Act.

3. By discharging Dino Di Cesare and Jose Ralph Diaz because they testified truthfully at the representation hearing, Respondent violated Section 8(a)(4) and (1) of the Act.

4. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All chauffeurs and helpers employed by the employer at its Flushing facility, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

5. Since September 8, 1994, Local 813, International Brotherhood of Teamsters, AFL–CIO has been the exclusive representative of all employees in the bargaining unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

6. By refusing to bargain with the Union since on and after September 21, 1994, Respondent has violated Section 8(a)(5) and (1) of the Act.

7. The General Counsel has not proved that Respondent engaged in any other violations of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Because of the Respondent's egregious and widespread misconduct, demonstrating a general disregard for the employees' fundamental rights, I find it necessary to issue a broad Order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, J.A.H. Carting Corp., Flushing, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating its employees about union support; instructing employees to refrain from union activity and to repudiate the Union; instructing its employees to testify falsely at a Board proceeding; promising employees a raise if they repudiate the Union and testify falsely at a Board proceeding; informing its employees that seeking membership in the Union is futile; threatening employees with adverse action and with discharge if they continue to support the Union; threatening to sell the Company if the employees support the Union; threatening its employees with bodily harm if they do not testify in Respondent's favor at a Board proceeding; and informing its employees than an employee has been discharged for joining the Union.

(b) Discharging employees because they join and support the Union and because they testify truthfully at a Board proceeding.

(c) Refusing to bargain with the Union.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Dino Di Cesare and Jose Ralph Diaz immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit found above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(e) Post at its facility in flushing, New York, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Local 813, International Brotherhood of Teamsters, AFL–CIO, or any other union and WE WILL NOT inform you that employees have been discharged for joining the Union.

WE WILL NOT discharge you for testifying truthfully at a Board proceeding.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT instruct you to refrain from union activity and to repudiate the Union.

WE WILL NOT instruct you to testify falsely at a Board proceeding, WE WILL NOT promise you a raise to repudiate the Union and testify falsely at a Board proceeding and, WE WILL NOT threaten you with bodily harm if you testify truthfully at a Board proceeding.

WE WILL NOT inform you that joining the Union is futile, WE WILL NOT threaten you with adverse action and discharge if you support the Union and, WE WILL NOT threaten to sell the Company if you support the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All chauffeurs and helpers employed by J.A.H. Carting Corp. at its Flushing facility, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL offer Dino Di Cesare and Jose Ralph Diaz immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

J.A.H. CARTING CORP.